

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20004-3209

(202) 326-7900

FACSIMILE:
(202) 326-7999

DOCKET FILE COPY ORIGINAL

FILED/ACCEPTED

OCT 26 2006

Federal Communications Commission
Office of the Secretary

October 26, 2006

Via Hand Delivery

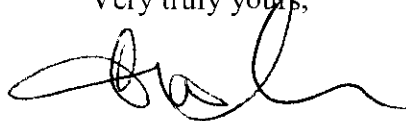
Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: WC Docket No. 06-172

Dear Ms. Dortch:

On behalf of Verizon, attached is an Opposition to Petition for Reconsideration of Protective Order for filing in the above-captioned proceeding. In accordance with Rule 1.51(c)(1), we are providing an original and four copies. Please contact me at (202) 326-7930 if you have any questions regarding this filing.

Very truly yours,



Evan Leo

Attachment


cc: Jeremy Miller
Tim Stelzig
Marcus Maher
Renee Crittendon
Julie Veach
Janice M. Myles
Best Copy and Printing, Inc.

0x4

CERTIFICATE OF SERVICE

I, LaTanya Parker, hereby certify that true and correct copies of the foregoing Opposition to Petition for Reconsideration of Protective Order, in WC Docket No. 06-172, were delivered by hand and via e-mail, this 26th day of October 2006, to the individuals on the following list:

Brad E. Mutschelknaus
Genevieve Morelli
Thomas Cohen
Brett Heather Freedson
Kelley, Drye & Warren LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
bmutschelknaus@kelleydrye.com
gmorelli@kelleydrye.com
tcohen@kelleydrye.com
bfreedson@kelleydrye.com


LaTanya Parker

OCT 26 2006

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Petitions of the Verizon Telephone Companies)	WC Docket No. 06-172
for Forbearance Pursuant to 47 U.S.C. § 160(c))	
in the Boston, New York, Philadelphia,)	
Pittsburgh, Providence and Virginia Beach)	
Metropolitan Statistical Areas)	

**OPPOSITION TO PETITION FOR RECONSIDERATION OF
PROTECTIVE ORDER**

The Commission should deny the Petition for Reconsideration of Protective Order filed by NuVox and XO.¹

The Commission has an established practice of limiting the use of confidential information to the proceeding in which such information was produced. The Commission permits exceptions to this practice only in “exceptional” cases, where there is a clear and substantial need to use the information in a specific proceeding, and where that need outweighs the concerns of interested parties. The Petition does not present such a case. The Petition argues that the Commission’s order in this proceeding could rely on confidential information that would serve as “benchmarks” to evaluate future forbearance requests. But the Commission has previously rejected the claim that the interest in so-called “benchmarking” is sufficient to outweigh concerns about permitting the use of confidential information in another proceeding.

The interest in benchmarking is particularly weak here, because the relief sought is open-ended. The Petition fails to specify the proceedings in which the confidential

¹ See Petition for Reconsideration of Protective Order, filed by NuVox Communications and XO Communications, Inc., WC Docket No. 06-172 (FCC filed Oct. 16, 2006).

data would be used or the purposes for which such data would be used. The speculative interest in being able to evaluate hypothetical forbearance requests in the future does not outweigh the tangible and immediate concerns of negating one of the Protective Order's key protections. Such open-ended disclosure would discourage parties from filing confidential information in the first instance, which could deny the Commission and other interested parties access to the best available data to make policy determinations. Such disclosure also would exacerbate the burdens, risks, and disputes that may arise with respect to the use of confidential data.

All of these concerns are present here. Verizon submitted confidential information in this proceeding that is proprietary either to Verizon and/or to various third-party carriers. Verizon submitted this confidential information in reliance on the Protective Order that the Commission adopted, which restricts the use of such information to this proceeding and any subsequent judicial reviews. Without such protections, the confidential information Verizon submitted could be used in an unrelated proceeding to which Verizon and other third-party carriers would normally not even be a party. Verizon and other third-party carriers could therefore be forced to participate in such proceedings solely to protect their confidential information. The potential prejudice to Verizon and other carriers is particularly acute, because the Petition is open-ended as to where and how the confidential information would be used.

DISCUSSION

Verizon's forbearance petitions contain multiple types of confidential data. Some of the confidential data are aggregate data for all carriers in an MSA – such as the number of UNEs, special access lines, and E911 listings carriers collectively obtained in each relevant MSA. Other, more competitively sensitive data provide carrier-specific breakdowns of these same types of information, and are therefore proprietary with respect to each individual carrier.

Verizon submitted these confidential data in reliance on the Protective Order that the Commission adopted. One of the central provisions of that Order – and of the Model Protective Order on which the Protective Order in this proceeding is based – restricts the use of confidential information filed in this proceeding to use in this proceeding and any subsequent judicial reviews. As the Commission explained in adopting this provision as part of the Model Protective Order:

We believe that routinely allowing confidential information from one proceeding to be used in other proceedings will increase the burdens, risks, and disputes associated with protective orders. Therefore, as a general matter, we will allow information subject to a protective order to be used only in the proceeding in which it was obtained. However, we reserve the right to permit the use of protected material in more than one Commission proceeding in the *exceptional case* where the Commission finds that such use would be in the public interest.²

This is not such an “exceptional case.” The Petition claims that Commission orders in forbearance proceedings will provide “significant market definitions and local competition benchmarks” that are necessary to evaluate future forbearance petitions. Petition at 3. But when the Commission adopted the provision at issue in the Model

² *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24,816, ¶ 31 (1998) (“*Confidential Information Order*”) (emphasis added) .

Protective Order, it specifically rejected the same “benchmarking” argument on which the parties rely here, finding it insufficient to outweigh the burdens and risks of allowing the use of confidential information.³

The concerns about the use of confidential data are particularly acute here – and the need to use such data correspondingly weak – because the relief sought is open-ended as to the proceedings in which the confidential data would be used and the purposes for which such data would be used. The Petition seeks to use the confidential information filed here in “future Commission proceedings” regarding forbearance petitions that have not yet been filed. Petition at 1. The Petition fails to explain how this confidential information would be used or why it is needed. The Petition places no limitation on the type of potential future forbearance petitions for which the confidential data may be used.

Thus, under the requested relief, parties would be required to disclose sensitive business information with no understanding of where it would be used and for what purpose. This would prejudice Verizon and other parties by forcing them to appear in an unrelated proceeding to which they would normally not even be a party, solely to protect their confidential information. Such proliferation of uses of confidential information and of protective orders would make enforcement of such orders more problematic and burdensome, both for the parties and the Commission. The Commission would have to keep a constant watch over multiple proceedings, with multiple protective orders, just to ensure that confidential data is not being misused. And without a pre-defined scope of

³ In that proceeding, Time Warner had sought to use confidential proceeding in one tariff review proceeding to make “benchmark comparisons” in another tariff review proceeding. *See Confidential Info Order* ¶ 31 & n.101; Comments of Time Warner Communications Holdings, Inc. in GC Docket No. 96-55, at 12 (FCC filed June 14, 1996).

use, there would be increased risks of such misuse and, inevitably, disputes about what constitutes a lawful use under the various agreements. Moreover, removing one of the Protective Order's key provisions after Verizon has already relied on that provision, would set a dangerous precedent that could discourage parties from disclosing their sensitive information to the Commission. This could deny the Commission and other interested parties access to the best available data needed to make policy determinations.

The Petitioners do not cite a single case where the Commission has granted such extraordinary relief. To the contrary, the Commission has rarely modified protective orders to allow use of confidential information in other proceedings, and has done so only in situations where those other proceedings were already established and therefore known to the parties. For example, in the *Access Charge Reform Order*, the Commission modified a protective order to allow confidential line count information filed in the non-rural universal service support proceeding to be used in the *CALLS Order* remand proceeding.⁴ But the Commission also rejected the "alternative request" to obtain and use the confidential information "in any Commission proceeding considering appropriate cost models for universal service purposes or the appropriate amount of any universal service support mechanism."⁵ The Commission stated that grant of such request was "beyond the scope" of the protective order "without a fact-specific showing of why such inspection is necessary, contrary to the Commission's rules governing treatment of records withheld from inspection."⁶ The Petition makes no "fact-specific showing" as to

⁴ See, e.g., *Access Charge Reform*, Order, 17 FCC Rcd 8,252, ¶ 7 (2002).

⁵ *Id.* ¶ 9.

⁶ *Id.* (citing 47 C.F.R. § 0.461(c)).

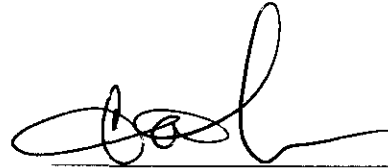
“why inspection is necessary.” Nor does it demonstrate why the need for disclosure outweighs the concerns of the parties submitting information.⁷

⁷ See *Confidential Information Order* ¶ 10 (“the handling of confidential information requires the Commission to balance the concerns of the parties submitting information and the interest of the public in accessing that information.”).

CONCLUSION

For the reasons set forth herein, the Commission should deny the Petition for Reconsideration of Protective Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Shakin', written over a horizontal line.

Michael E. Glover
Of Counsel

Edward Shakin
Sherry Ingram
Verizon
1515 North Court House Road
Suite 500
Arlington, Virginia 22201
(703) 351-3065

Evan T. Leo
Kellogg, Huber, Hansen, Todd,
Evans & Figel, P.L.L.C.
1615 M Street, NW
Suite 400
Washington, DC 20036
(202) 326-7930

Attorneys for Verizon

Dated: October 26, 2006